No. 261.

Brief of Tibbets & Co.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901

No. 261

THOMAS P. KENNARD,
Plaintiff in Error,
v.
THE STATE OF NEBRASKA,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

BRIEF OF PLAINTIFF IN ERROR.

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F. N. PROUT, ATTORNEY GENERAL,
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Attorneys for Defendant in Error.

JOURNAL-GAZETTE PRINTING CO., LINCOLN

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STATEMENT.

Section 12 of the Enabling Act, under which the State of Nebraska was admitted into the Union as a State, passed

by Congress April 19th, 1864, 13 U. S. Statutes at Large, pg. 47 is as follows:

> "AND BE IT FURTHER ENACTED: That five per centum of the proceeds of the sales of all public lands lying within said State, which have been or shall be sold by the United States prior or subsequent to the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to the said State for the support of common schools."

At the session of the State Legislature of 1873 the following joint resolution was passed:

> "Joi[illegible] resolution relative to the appointment of an agent or agents for the collection of the amount due from the United States to the State of Nebraska, on account of lands in this State disposed of by Indian reservations, military land warrants, and land-scrip issued for military services in the wars of the United States, for agricultural college scrip, and for the recovery of swamp and overflowed lands due the State.
>
> Be it enacted by the Legislature of the State of Nebraska:
>
> That the governor be, and he hereby is, authorized and empowered to appoint an agent or agents in behalf of this state, to prosecute to final decision before congress, or in the courts, the claim of this state for the five per cent. due to the same from the United States, upon the land of this state disposed of by Indian reservations, and by the location of military land warrants, and land-scrip, issued for military service in the wars of the United States, and for agricultural college scrip, and railroad land; and,
>
> Whereas, The government of the United States has allowed various states large amounts of swamp and overflowed lands lying within their borders; and,
>
> Whereas, No such allowance of swamp and

overflowed lands has ever been received by this state for the large area of land lying within its limits subject to overflow: now, therefore,

Be it resolved by the Senate and House of Representatives of the State of Nebraska, That the governor is hereby authorized and empowered to appoint a competent and reliable agent or agents as provided in section one of this act, and that said agent or agents shall receive such compensation from said lands or money, as may be agreed upon by said agent or agents and the governor, conditioned that the state shall be put to no expense whatever, unless said agent or agents shall be successful in whole or in part in securing the aforementioned claims: Provided, That the foregoing shall in no wise apply to the five per cent. cash school fund accruing to the State.

Approved, February 8, 1873."

In pursuance with the above resolution the Governor of the State of Nebraska made with the plaintiff in error, the following contract:

"State of Nebraska, Executive Department,
Lincoln, October 15, 1874.

That whereas the legislature of the State of Nebraska passed a joint resolution relative to the appointment of an agent or agents for the collection of the amount due from the United States to the State of Nebraska, on account of lands in this State disposed of by the Indian reservations, military land warrants and land scrip issued for military services in the wars of the United States, for agricultural college scrip and for the recovery of swamp and overflowed lands due the state approved February 8, 1873, a certified copy of which is hereto attached and made a part of this agreement:

Now therefore in pursuance of the object and intent of said joint resolution and by the power and authority vested in me by the same, I, Robert W. Furnas, governor of the State of Nebraska, do by these presents appoint as agent Thomas P. Kennard and with him stipulate as follows: in consideration that the said Thomas P. Kennard shall diligently and to the best of his ability prosecute and

collect the claims specified in said joint resolution and upon the terms therein specified and contemplated, he, the said Thomas P. Kennard, shall have and be entitled to receive for his services in the premises fifty per cent. of the amount so collected, the remaining fifty per cent. upon the amount so collected to be paid over to the said Robert W. Furnas, governor of Nebraska or his successor in office for the use and benefit of the State of Nebraska, as by law in such cases made and provided. Provided that it is hereby distinctly understood and agreed that no charge shall be made to the State for any expense or services of whatever kind or nature in case of failure to collect money or lands contemplated in the joint resolution authorizing this contract; to all of which the contracting parties agree as witness their respective signatures the day and year above written.

(State Seal) ROBERT W. FURNAS,
Governor of Nebraska.
THOMAS P. KENNARD.

In presence of J. H. Alford."

Under this contract the plaintiff in error prosecuted the claim of the State, before the Department of the Interior at Washington, against the general government for an allowance of moneys that the State would have received under the five per cent. provision of the Enabling Act, in case certain lands had been sold by the government, instead of being "disposed of by Indian reservations and by the location of military land warrants and land scrip issued for military service in the wars of the United States and for agricultural college scrip and railroad lands." On the 14th of January, 1881, the plaintiff in error obtained from the Department of the Interior a decision, awarding to the state five per cent. of the proceeds of the sale of the lands of the Pawnee Indian Reservation, consisting of lands within the limits of the State of Nebraska. Under this decision, prior to June 11th, 1884, there was paid over to the State by the general government the sum of $27,043.99.

The warrants by which the transfer was made to the State of the several sums which made up this amount, were drawn in favor of the governor of the State. The Governor turned all the money received over to the State Treasurer, the State law providing that all money received by any state officer for the state shall by such officer be turned into the State treasury. After the money was once in the State treasury the plaintiff in error could obtain his share of it only by an appropriation by the State Legislature. After several unsuccessful attempts to obtain such appropriation, a resolution was passed by the house, March 26, 1897, authorizing plaintiff in error to bring suit against the State to determine the validity of his claim and the amount due thereon. The action was commenced in the District Court of Lancaster County, Nebraska, May 29th, 1897, issues joined, trial had, and judgment rendered in favor of Kennard and against the State for $13,521.99. The State appealed the cause to the Supreme Court of the State; briefs were filed, cause argued and submitted, and October 5th, 1898, an opinion was filed by the Court reversing the judgment of the lower Court. This opinion is found on page 7 and following of the record. Upon application of Kennard, a rehearing was granted and had, and February 9th, 1899, another opinion was filed, setting aside the judgment of the lower Court. This opinion is found on page 19 of record, pg. 11 of printed record, and as it is important in the consideration of this case, we here give it in full.

STATE V. KENNARD.

(Supreme Court of Nebraska. Feb. 9, 1899).

Public Lands—Pawnee Reservation—Title—Grant to State.

1. At the time of the admission into the Union of the state of Nebraska, the lands therein occupied in common by

the Pawnee Indians, and known as the "Pawnee Indian Reservation," were public lands, within the meaning of section 12 of the act of congress known as the "Enabling Act" (13 Stat. 47).

2. The fee-simple title to said lands at said time was in the United States, incumbered only with the right of said Indians to occupy the same.

3. By section 12 of said enabling act, congress granted to the state of Nebraska 5 per cent. of the proceeds arising from the sale of said lands, which took effect upon the extinguishment of the Indians' right of occupancy and the sale of the lands by the United States.

4. State v. Kennard, 76 N. W. 545, 55 Neb.—, reaffirmed.

(Syllabus by the Court.)

On rehearing. Reversed.

C. J. Smyth, Atty. Gen., Ed. P. Smith, and W. D. Oldham, Dep. Attys. Gen., for plaintiff in error. Tibbets Bros., Morey & Ferris, and Talbot & Allen, for defendant in error.

RAGAN, C. This is a rehearing of State v. Kennard, 55 Neb. —, 76 N. W. 545. By section 12 of the enabling act passed by congress April 19, 1864, (13 Stat. 47), the United States donated to the state of Nebraska 5 per cent. of the proceeds of sales of all public lands lying within the state of Nebraska which had prior to that time been sold or which should subsequently be sold by the United States, after deducting expenses incident to such sale. At the time the state was admitted into the Union a tribe of Indians, known as the "Pawnees," occupied in common, a tract of lands in

this state known as the "Pawnee Indian Reservation." After the state was admitted into the Union the United States took such steps as resulted in the extinguishment of the rights of these Indians to the lands in this reservation, sold the lands, and, it seems, used the proceeds of the sale to defray the expenses incident thereto, and in procuring other lands for the Indians elsewhere, and placed the remaining proceeds of the sale of these lands in the United States treasury, to the credit of the Indians. By an act passed by the legislature of the state of Nebraska in February, 1873 (see Gen. St. 1873, c. 59), it seems that the legislature was of opinion that by reason of section 12 of the enabling act the United States was indebted to it for 5 per cent. of the value of the lands lying within the state, used as Indian reservations, and 5 per cent. of the value of all lands on which private parties had located military land warrants and land scrip issued for military service in the wars of the United States, and 5 per cent. of the value of all such as had been donated by the United States to railroads. It is also recited in said act that the United States had donated to other states swamp and overflowed lands lying within their borders, but that no such donation or allowance of swamp and overflowed lands had been made to this state; and it seems to have been the opinion of the legislature that all the swamp and overflowed lands lying within the state belonging to the United States should by it be donated to the state and the act under consideration authorized the governor to employ an agent, in behalf of the state, to prosecute to final decision before congress or in the courts the claim of the state of Nebraska against the United States for the 5 per cent. of the value of the lands disposed of by the United States for any of the purposes already mentioned, and for the purpose of procuring from the United States a

donation of the swamp and overflowed lands within its borders. The act left the compensation of the agent to be agreed upon by the governor and the agent, but provided, in effect, that the agent should not be entitled to any compensation for collecting from the United States any part of the 5 per cent. cash school fund which had been donated to the state by the United States by section 12 of the enabling act aforesaid. The governor of the state entered into a contract with Kennard, in pursuance of the act of the legislature just mentioned, in and by which he authorized Kennard to prosecute and collect the claims of the state against the nation in conformity with the act of the legislature, and that the state should pay him one-half of all moneys, except such cash school fund, he should collect for the state as such agent. Mr. Kennard entered upon the performance of his contract with the governor, and by his efforts induced the secretary of the Interior to acknowledge that the United States were indebted to the state of Nebraska in the sum of 5 per cent. of the proceeds of the sale of the Pawnee Indian reservation lands made by the United States subsequent to the admission of the state into the Union; and, in pursuance of this decision of the secretary of the interior, the United States paid into the treasury of this state $27,000. Mr. Kennard, by permission of the legislature, then brought this suit to recover one-half of that sum. He had judgment in the district court of Lancaster County, and the state brought the same here for review, and the judgment of the district court was reversed. We based our judgment of reversal of this judgment upon the proposition that the lands of the Pawnee Indian reservation were public lands, within the meaning of section 12 of the enabling act, and that the only money collected by Mr. Kennard was the 5 per cent. of the proceeds of the sale made of these lands by the Unit-

ed States, and by the terms of his contract he was not to have any compensation for collecting these moneys. Counsel for Mr. Kennard so strenuously insisted that we were wrong in this conclusion, that we granted a rehearing. We have again examined the question, with the result that we adhere to our former conclusion.

In 1873 the Great and Little Osage Indian tribes occupied certain lands in common in the state of Kansas. The lands occupied by them were known as "Indian Reservations." In that year congress passed an act (sec. 12 Stat. 772) in and by which it granted to the state of Kansas, to enable a railroad to be constructed between certain points, each alternate section of land, designated by odd numbers, for 10 sections in width, on each side of said railroad, as it should be located. The legislature of the state of Kansas accepted this grant, and designated the Leavenworth, Lawrence & Galveston Railroad Company to construct the road and receive the grant of land. The railroad company constructed the road, and received from the state of Kansas patents for the alternate sections of this land within these Indian reservations. The United States then brought ejectment against the railway company for the lands lying within the Indian reservations, which had been conveyed to the railway company by the state of Kansas; and the supreme court, by a divided opinion, held that the act of congress granting to the state of Kansas the alternate sections of land within 10 section of this railroad did not vest the state of Kansas with any lands within the Indian reservation. It was conceded that the fee-simple title to the Indian reservation lands was in the United States, and that the only title of the Indian was the right to occupy; and because the United States were not invested with possession and the right to

possession, as well as the fee, the court held that the grant did not embrace the lands within the reservations. The principal upon which the case was decided was that all grants are to be strictly construed against the grantee, that nothing passes except what is conveyed in clear and explicit language, and that, strictly construing the act of congress, it would not be held that the United States intended to convey what it did not own, namely, both title and seisin. Leavenworth, L. & G. R. Co. v. U. S., 92 U. S. 753. This conclusion of the court was reached notwithstanding the fact that, on the same day the act donating these lands to the state of Kansas passed, another act of congress went into effect, authorizing the president, by treaty or otherwise, to extinguish the rights of these Osage Indians to the lands in their reservation, and that subsequently the title of these Indians to these lands was extinguished, the lands put upon the market and sold by the United States, and the proceeds placed in the United States treasury, to the credit of the Indians. In 1864 certain tribes or bands of Sioux Indians occupied in common certain lands in what was then known as "Dakota territory," and, by an act of congress passed in July of that year (13 Stat. 365), congress granted to the Northern Pacific Railway Company each alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile, on each side of its line of railway, as the same was to be constructed between Lake Superior and Puget Sound. The railroad, as constructed, passed through the lands occupied by these Sioux Indians; and it claimed that the act of congress vested in it the title to these alternate sections of land lying within these Sioux reservations. On the other hand, it was contended that at the time the grant to the Northern Pacific went into effect the United States were not in possession of both the fee title and the

possession and right to possession of these Indian lands, that the grant should be strictly construed, and that the act could not be interpreted to mean that the United States granted the railroad company what it did not own; and the case in 92 U. S., just referred to, was relied upon to support that contention. But the national supreme court held that by the act of congress the United States donated to the railroad company all the right and title which it (the United States) had in those lands. Buttz v. Railroad Co., 119 U. S. 55, 7 Sup. Ct. 100. This Northern Pacific Railroad Case virtually overruled the case in 92 U. S. The doctrine, then, of the supreme court of the United States, is that all Indian lands,—all lands occupied in common by the Indians —whether these lands be reservations or not, are public lands, the fee-simple title to which is in the United States; that the Indian is but the ward of the nation, and his only interest or title to the lands of which he is in possession is the right to occupy. We think, therefore, that when Nebraksa was admitted into the Union the lands of the Pawnee Indian reservation were public lands,—the fee-simple title was in the United States,—and the Indians had only the right of occupancy in those lands, and that an absolute grant by congress to the state of all public lands within her borders would have invested the state with the title to the lands of the Pawnee Indian reservation, incumbered only with the Indian's right of occupancy. The United States, then, by paying into the state treasury, at the request and solicitation of Mr. Kennard, 5 per cent. of the sale of these Indian reservation lands, was simply performing the grant made by the nation to the state by section 12 of the enabling act, as by the grant the United States promised to pay to the state, not only 5 per cent. of the proceeds of all public lands lying within the state, and which had prior to that

time been sold by the United States, but also to pay to the state 5 per cent. of the proceeds of all public lands lying within the state which might after the date of the grant be sold by the United States. The fact that the United States sold these lands, and put the money to the credit of the Pawnee Indians, is not a consideration of any importance in determining whether these Pawnee Indian reservation lands were public lands, within the meaning of the enabling act. The thing of controlling importance is that the fee-simple title to these lands was in the United States. They were therefore public lands, and the promise was that when sold by the owner, it would pay 5 per cent. of the proceeds of the sale to the state. What the United States did with the money derived from the sale of those lands is unimportant. The judgment of the district court is reversed. Reversed."

This cause was by the Supreme Court remanded to the District Court for further proceedings. The case was formally subsequently tried in the District Court, upon the same pleadings and evidence as upon first trial, judgment rendered against plaintiff and in favor of defendant October 7, 1899; plaintiff appealed and cause again appeared in Supreme Court for final formal judgment, where it appeared upon the same pleas and evidence, as before, and judgment rendered January 4th, 1900. A writ of error was then permitted to issue from this Court.

ASSIGNMENTS OF ERROR.

The sole and only assignment for the consideration of this Court is found in the Petition in Error, pg. 128 record, pg. 61 printed record, and is as follows:

> "That on the 4th day of January, 1900, judgment was rendered against him (plaintiff in error)

in the above entitled cause in the Supreme Court of the State of Nebraska, which judgment is final and the Court rendering the same is the highest Court in said State in which a decision of said cause can be had.

"That in the rendition of said judgment by the said Court there was drawn in question the construction of the Statutes of the United States with reference to the lands of the Pawnee Indian reservation located in the State of Nebraska, and the act of Congress authorizing the admission of the State of Nebraska into the Union passed April 19, 1864, and found on page 47 of 13 U. S. Statutes at Large, and the decision of said Supreme Court was against your petitioner, on such construction.

"The said decision was necessary to the judgment given by the said Supreme Court and without such decision and construction the said judgment could not have been given."

THE FACTS.

At no time in the progress of this case has there been any dispute as to the facts. The sole question is one of law.

JURISDICTION OF THIS COURT

The statutes of the State of Nebraska make the opinion of the Supreme Court of the state a part of the record of a case pending before such court. Section 18, Chapter 19, entitled "Supreme Court" of the Compiled Statutes of the State of Nebraska, 1901, is as follows:

"The opinion of the Court on all questions brought before them, as well as such motions, collateral questions, and points of practice as they may think of sufficient importance, shall be reduced to writing, filed with and recorded by the

clerk of the court. All dissenting opinions must be written, filed and recorded in the same manner."

Section 594 of the Code of Civil Procedure of the State of Nebrsaka provides as follows:

"It shall be the duty of the judges of the Supreme Court to prepare and file their opinion in every case as brought before them, within sixty days after the decision of the same, and no mandate shall be sent to the court below until the opinion provided for by this section has been filed."

The construction of Section 12 of the Enabling Act, or the Federal Statutes with reference to the lands of the Pawnee Indian Reservation, as sustaining or defeating plaintiff's cause of action in Nebraska, was not raised by specific allusion in the pleadings, but it can fairly be inferred that the question was discussed and presented to the Court by the briefs and arguments of counsel, which are not made a part of the record. So far as the record is concerned, the first appeal made to these congressional acts, as defeating the plaintiff's right of recovery, is found in the first opinion of the State Supreme Court filed October 5th, 1898, page 7 of record, pg. 4 of printed record, where it is held that plaintiff 's right of recovery is defeated solely upon the construction given to these congressional acts.

The 2nd and 8th paragraphs of the motion for rehearing filed by Kennard October 29, 1898, and found on page 14 of record, page 8 of printed record, are as follows:

"2. The Court erred in holding that the Pawnee Indian Reservation lands, concerning which defendant in error performed the services for plaintiff in error, were public lands."

"8. The defendant in error contends the law should be

that the Pawnee Indian Reservation lands involved in this controversy, never were public lands, and were never owned by the United States and that the United States never had any interest in said lands after September 4th, 1857, except as trustee for the Indians."

This motion for rehearing was granted, a rehearing had, and the subsequent and last opinion of the court was filed February 9, 1899, page 19 of record. page 11 of printed record, and which has been heretofore set forth in full. In this opinion the sole and only question discussed and decided was the status of the Pawnee reservation lands in Nebraska under the act of Congress, and whether or not they were *public lands* within the meaning of the 12th section of the Enabling Act. The right of plaintiff's recovery was defeated solely by the construction that the Court placed upon these congressional acts. The question was necessarily involved in the case and the case could not have been determined adversely to plaintiff without deciding this question. It is well settled that if a federal question appears in the record, and was decided, or such decision as necessarily involved in the case, and the case could not have been determined without deciding such question, the case comes within the provision of the third class mentioned in section 709 of the U. S. Revised Statutes and this Court has jurisdiction to review the action of the State Court.

> Columbia Water Power Co. v. Columbia Street Ry. Co., 177 U. S. 475 (19 Sup. Ct. Rep. 247) and cases cited in the opinion.

CONSTRUCTION OF THE TERM "PUBLIC LANDS" IN THE ENABLING ACT AS APPLIED TO LANDS OF PAWNEE INDIAN RESERVATION.

The treaty with the Pawnee Indians, creating the Indian reservation in the State of Nebraska, is found in 11 U.

S. Statutes at Large 729. It provides for the transfer of all right, title and interest theretofore possessed by the Indians in all lands in the United States except the reservation thirty miles by fifteen miles in extent, which is specifically reserved for their use, and for their homes; provides for the payment by the government to the Indians the sum of $40,000 per annum for a period of five years, the establishment of schools, and supply to the Indians blacksmith, gunsmith, and tinsmith tools, farming utensils and stock, the erection of grist and lumber mills, dwelling houses, and keeping the same in repair; provides for the permissible occupancy of the reservation by the government for the purpose of forts, military posts and roads; provides that the Indians shall not alienate any part of said reservation, except to the United States; but if they think proper to do so, they may divide said lands among themselves, giving to each person or each head of a family, a farm subject to their tribual regulations. This treaty was approved by the Senate March 31st, 1858. A subsequent treaty was made with the Indians April 10, 1876, found in 19 U. S. Statutes at Large 28, wherein it was provided that with the consent and concurrence of the Pawnee tribe of Indians expressed in open council in the usual manner, the Secretary of the Interior was authorized to make sale of the lands of the reservation, remove the Indians to another reservation in Indian Territory, and the proceeds of such sale, after reimbursing the government for all expenses incurred in surveying the lands, making sale, purchase of another reservation, and removal of the Indians thereto, were to be placed to the credit of said Indians on the books of the Treasury of the United States, and bear interest at the rate not to exceed five per centum per annum, payable semi-annually, except such portions as may be found necessary to be expended for the immediate use of the Indians, for subsistence or other beneficial objects.

The contention of the plaintiff in error is, that by virtue of these treaties the lands of this reservation were severed from the public domain, and were no more "public lands" within the meaning of the term as used in the Enabling Act.

Referring to treaties with Indians this court has said:

"A treaty is the supreme law of the land. Courts cannot go behind it for the purpose of annulling its effect and operation and they should be liberally construed."

Fellows v. Blacksmith, 19 How. 366;
United States v. Lariviere, 53 U. S. 188;
United States v. New York Indians, 173 U. S. 464;
Ward v. Race Horse, 163 U. S. 504.

Whenever a tract of land is legally appropriated to any purpose, it is thereby severed from the mass of public lands, so that no subsequent law or proclamation or sale will be construed to embrace it.

Wilcox v. Jackson, 13 Pet. 498;
Polk v. Wendall, 9 Cranch 87;
Vincennes Uni. v. Indians, 14 Howard, 268;
Cherokee Nation v. Georgia, 5 Pet. 1;
United States v. Southern Pac., 146 U. S. 570;
Railroad Co v. Dunmeyer, 113 U. S. 629;
St. Paul v Phelps, 137 U. S., 528
Northern Pacific v. Musser, 168 U. S. 604.

This principal applies with particular force to Indian reservations, and as to all claimants, aside from the United States, the Indians are regarded as owners.

Atlantic v. Mingus, 165 U. S. 413;
United States v. Payne, 2 McCrary 303;

Dubuque & Sioux R. R. v. Desmoines Valley R. R., 109 U. S. 329;

Newhall v. Sanger, 92 U. S. 761;

Leavenworth v. United States, 92 U. S. 733;

Doolan v. Carr, 125 U. S. 625.

A reservation of lands to Indians, unaccompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple, and the treaty by which such reservation is made must be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would be naturally understood by the Indians, and no specific words of grant are necessary.

Jones v. Meehan, 175 U. S. 1, (20 Sup. Ct. Rep. 1).

Crews v. Burcham, 1 Black 352;

United States v. New York Indians, 173 U. S. 464;

New York Indians v. United States, 170 U. S. 1;

United States v. Old Settlers, 148 U. S. 427.

A restricted reservation to Indians conveys an equitable title.

Lomax v. Pickering, 173 U. S. 26, (19 Sup. Ct. Rep. 416).

"The words public lands used in our legislation mean such as are subject to sale or other disposal under general laws."

Newhall v. Sanger, 92 U. S. 761;

Mann v. Tacoma, 153 U. S. 273, (14 Sup. Ct. Rep. 820).

From the authorities above cited the plaintiff in error contends that it clearly appears that by the original treaty

with the Pawnee Indians it was conclusively intended by the general government to convey the Pawnee Reservation to the Indians, and that no subsequent grant of the lands included in the reservation, or of any interest therein, could be made by the government to any other party, including the State of Nebraska, and that the construction of the provision in the Enabling Act giving to the state five per cent. of the proceeds of the sale of these lands, would be in derogation of the treaty and would be a breach of good faith with the Indians; that these lands were not public lands within the meaning of the Enabling Act.

Whether or not the United States should in equity indemnify the state to the extent of five per cent. of the value of these lands, is another question and not for the consideration of the Court.

THOMAS P. KENNARD,
BY A. S. TIBBETS,
His Attorney.